

Federal Reserve System

§ 271.8

agency) in litigation with the Committee, including by not limited to:

- (1) Memorandums;
- (2) Reports;
- (3) Other documents prepared by the staff or agents of the Committee;
- (4) Records of deliberations of the Committee and of discussions at meetings of the Committee, or staff or agents of the Committee.
- (e) Is contained in personnel, medical, or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (f) Is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;
- (g) Constitutes records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).
- (h) Constitutes a document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

Except as provided by or pursuant to this part, no person shall disclose, or permit the disclosure of, any information of the Committee to any person, whether by giving out or furnishing such information or copy thereof, by allowing any person to inspect, examine, or reproduce such information or copy thereof, or by any other means, whether the information is located at the offices of the Board, any Federal Reserve bank, or elsewhere, unless such disclosure is required in the performance of duties for, or pursuant to the direction of, the Committee.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973; 42 FR 13299, Mar. 10, 1977; 56 FR 23995, May 28, 1991]

§ 271.7 Subpoenas.

(a) *Advice by person served.* If any person, whether or not an officer or employee of the Committee, of the Board of Governors of the Federal Reserve System, or of a Federal Reserve Bank, has information of the Committee that may not be disclosed by reason of § 271.5 or § 271.6 and in connection therewith is served with a subpoena, order, or other process requiring his personal

attendance as a witness or the production of documents or information upon any proceeding, he should promptly inform the Secretary of the Committee of such service and of all relevant facts, including the documents and information requested and any facts that may be of assistance in determining whether such documents or information should be made available; and he should take action at the appropriate time to inform the court or tribunal that issued the process, and the attorney for the party at whose instance the process was issued, if known, of the substance of this part.

(b) *Appearance by person served.* Except as disclosure of the relevant information is authorized pursuant to this part, any person who has information of the Committee and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing his refusal upon this part. If, notwithstanding, the court or other body orders the disclosure of such information, or the giving of such testimony, the person having such information of the Committee shall continue to decline to disclose such information and shall promptly report the facts to the Committee for such action as the Committee may deem appropriate.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973]

§ 271.8 Fee schedule; waiver of fees.

(a) *Fee schedule.* Records of the Committee available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) *Direct costs* mean those expenditures which the Committee actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond

to a request made under § 271.4 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Duplication* refers to the process of making a copy of a document necessary to respond to a request for disclosure of records, or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or of an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education which operates a program of scholarly research.

(3) *Noncommercial scientific institution* refers to an institution that is not operated on a *commercial* basis (as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media* refers to any person who is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. *Free lance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests, each seeking portions of a document or documents solely for the purpose of avoiding the assessment of fees, the Secretary may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures.* (1) Fee payment. The Secretary may assume that a person requesting records pursuant to § 271.4 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or

seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed \$250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under § 271.4(c) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when a fee is not paid within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.A. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees.* (1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly

to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees.

(2) *Contents of request for waiver.* The Secretary shall normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

APPENDIX A TO PART 271—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:

Photocopy, per standard page.....	\$ 0.10
Paper copies of microfiche, per frame	
Duplicate microfiche, per microfiche	\$ 0.10
	\$ 0.30

Search and Review:

Clerical/Technical, hourly rate	\$17.00
Professional/Supervisory, hourly rate	\$32.00
Manager/Senior Professional, hourly rate.....	\$53.00

Computer Search and Production:

Operator search time, hourly rate	\$25.00
Cassette tapes	\$ 5.00
PC computer output, per minute.....	\$ 0.10
Mainframe computer output	Actual cost

Special Services

The Secretary of the Committee may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters.